

Charles M. Russell National Wildlife Refuge

Reserved Water Right Compact
Negotiations

March 15, 2012



Executive Orders

EXECUTIVE ORDER
ESTABLISHING THE FORT PECK GAME RANGE

Montana

By virtue of and pursuant to the authority vested in me as President of the United States and by the act of June 25, 1910, ch. 421, 36 Stat. 847, as amended by the act of August 24, 1912, ch. 369, 37 Stat. 497, and subject to the conditions therein expressed and to all valid existing rights, it is ordered that the following-described lands, insofar as title thereto is in the United States, be, and they are hereby, withdrawn from settlement, location, sale, or entry and reserved and set apart for the conservation and development of natural wildlife resources and for the protection and improvement of public grazing lands and natural forage resources: *Provided*, That nothing herein contained shall restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of the lands under the applicable laws: *Provided further*, That any lands within the described area which are otherwise withdrawn or reserved will be affected hereby only insofar as may be consistent with the uses and purposes for which such prior withdrawal or reservation was made: *And provided further*, That upon the termination of any private right to, or appropriation of, any public lands within the exterior limits of the area included in this order, or upon the revocation of prior withdrawals unless expressly otherwise provided in the order of revocation the lands involved shall become part of this preserve:

MONTANA PRINCIPAL MERIDIAN

- T. 21 N., R. 23 E., secs. 1 to 18, inclusive.
- T. 22 N., R. 23 E., all.
- T. 21 N., R. 24 E., secs. 1 to 18, inclusive.
- T. 22 N., R. 24 E., all.
- T. 21 N., R. 25 E., secs. 1 to 18, inclusive.
- T. 22 N., R. 25 E., all.
- Tps. 21 and 22 N., R. 26 E., all.
- T. 21 N., R. 27 E., secs. 1 to 25, inclusive.
- T. 22 N., R. 27 E., all.
- T. 21 N., R. 28 E., secs. 1 to 23, inclusive, and secs. 26 to 30, inclusive.
- T. 22 N., R. 28 E., secs. 5 to 8, inclusive, and secs. 13 to 25, inclusive.
- T. 18 N., R. 29 E., secs. 1, 2, 11, 12, and 13.
- T. 19 N., R. 29 E., secs. 1, 2, and 3, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34, 35, and 36.
- T. 20 N., R. 29 E., secs. 1, 2, and 3, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, and secs. 34, 35, and 36.
- T. 21 N., R. 29 E., secs. 1 to 18, inclusive, secs. 21 to 28, inclusive,

- and secs. 33 to 36, inclusive.
 T. 22 N., R. 29 E., secs. 31 to 36, inclusive.
 T. 18 N., R. 30 E., secs. 4, 5, and 6.
 T. 19 N., R. 30 E., secs. 1 to 11, inclusive, secs. 15 to 22, inclusive, and secs. 29 to 33, inclusive.
 T. 20 N., R. 30 E., all.
 T. 21 N., R. 30 E., secs. 1, 12, and 13, and secs. 19 to 36, inclusive.
 T. 22 N., R. 30 E., secs. 1, 12, 13, 24, 25, and 36.
 T. 23 N., R. 30 E., secs. 25 and 36.
 T. 20 N., R. 31 E., secs. 1 to 8, inclusive, secs. 17 to 20, inclusive, and secs. 29 to 32, inclusive.
 Tps. 21 and 22 N., R. 31 E., all.
 T. 23 N., R. 31 E., secs. 25 to 36, inclusive.
 T. 21 N., R. 32 E., secs. 1 to 12, inclusive, secs. 16 to 19, inclusive, and secs. 30 and 31.
 T. 22 N., R. 32 E., all.
 T. 21 N., R. 33 E., secs. 1 to 6, inclusive, secs. 9 to 16, inclusive.
 T. 22 N., R. 33 E., all.
 T. 23 N., R. 33 E., secs. 35 and 36.
 T. 21 N., R. 34 E., secs. 6, 7, and 18.
 T. 22 N., R. 34 E., all.
 T. 23 N., R. 34 E., secs. 22 to 36, inclusive.
 T. 22 N., R. 35 E., all.
 T. 23 N., R. 35 E., secs. 19 to 36, inclusive.
 T. 21 N., R. 36 E., secs. 1, 2, 3, 10, 11, and 12.
 T. 22 N., R. 36 E., all.
 T. 23 N., R. 36 E., secs. 1, 12, 13, and secs. 19 to 36, inclusive.
 T. 21 N., R. 37 E., secs. 1 to 17, inclusive.
 Tps. 22 and 23 N., R. 37 E., all.
 T. 21 N., R. 38 E., secs. 2 to 11, inclusive, and secs. 14 to 18, inclusive.
 T. 22 N., R. 38 E., secs. 1 to 24, inclusive, and secs. 26 to 36, inclusive.
 T. 23 N., R. 38 E., all.
 T. 24 N., R. 38 E., secs. 25 to 28, inclusive, and secs. 33 to 36, inclusive.
 T. 22 N., R. 39 E., secs. 1 to 20, inclusive.
 Tps. 23 and 24 N., R. 39 E., all.
 T. 25 N., R. 39 E., secs. 1 to 4, inclusive, secs. 9 to 16, inclusive, secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.
 T. 26 N., R. 39 E., secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.
 T. 22 N., R. 40 E., secs. 1 to 9, inclusive, and secs. 16, 17, and 18.
 Tps. 23, 24, and 25 N., R. 40 E., all.
 T. 26 N., R. 40 E., secs. 19 to 36, inclusive.
 T. 23 N., R. 41 E., sec. 6, all.
 T. 24 N., R. 41 E., secs. 1 to 16, inclusive, secs. 18, 19, 23, 24, 25, 30, 31, and 36.
 T. 25 N., R. 41 E., all.
 T. 26 N., R. 41 E., secs. 1, 2, and 3, and secs. 10 to 36, inclusive.
 T. 20 N., R. 42 E., sec. 1, secs. 11 to 14, inclusive, and secs. 23 to 26, inclusive.
 T. 21 N., R. 42 E., secs. 1 and 2, secs. 11 to 14, inclusive, secs. 23 to 26, inclusive, and secs. 35 and 36.
 T. 22 N., R. 42 E., secs. 1 to 4, inclusive, secs. 9 to 16, inclusive, secs. 21 to 28, inclusive, and secs. 34, 35, and 36.
 T. 23 N., R. 42 E., secs. 1 to 28, inclusive, and secs. 33 to 36,

- inclusive.
 ✓ T. 24 N., R. 42 E., secs. 5 to 11, inclusive, and secs. 14 to 35, inclusive.
 ✓ T. 25 N., R. 42 E., secs. 4 to 10, inclusive, secs. 16 to 19, inclusive, and secs. 30 and 31.
 ✓ T. 26 N., R. 42 E., secs. 3 to 8, inclusive, secs. 17 to 20, inclusive, and secs. 29 to 33, inclusive.
 ✓ T. 20 N., R. 43 E., secs. 5 to 8, inclusive, and secs. 17 and 18.
 ✓ T. 21 N., R. 43 E., secs. 2 to 11, inclusive, secs. 14 to 23, inclusive, and secs. 26 to 32, inclusive.
 ✓ T. 22 N., R. 43 E., secs. 4 to 9, inclusive, secs. 16 to 21, inclusive, and secs. 27 to 35, inclusive.
 ✓ T. 23 N., R. 43 E., secs. 5 to 8, inclusive, secs. 16 to 21, inclusive, and secs. 28 to 33, inclusive.
 ✓ T. 24 N., R. 43 E., secs. 19 and 20, and secs. 29 to 32, inclusive.

This range or preserve, insofar as it relates to conservation and development of wildlife, shall be under the joint jurisdiction of the Secretaries of the Interior and Agriculture, and they shall have power jointly to make such rules and regulations for its protection, administration, regulation, and improvement, and for the removal and disposition of surplus game animals, as they may deem necessary to accomplish its purposes, and the range or preserve, being within grazing districts duly established pursuant to the provisions of the act of June 28, 1934, ch. 865, 48 Stat. 1269, as amended by the act of June 26, 1936, Public No. 827, 74th Congress, shall be under the exclusive jurisdiction of the Secretary of the Interior, so far as it relates to the public grazing lands and natural forage resources thereof: *Provided, however,* That the natural forage resources therein shall be first utilized for the purpose of sustaining in a healthy condition a maximum of four hundred thousand (400,000) sharptail grouse, and one thousand five hundred (1,500) antelope, the primary species, and such nonpredatory secondary species in such numbers as may be necessary to maintain a balanced wildlife population, but in no case shall the consumption of forage by the combined population of the wildlife species be allowed to increase the burden of the range dedicated to the primary species: *Provided further,* That all the forage resources within this range or preserve shall be available, except as herein otherwise provided with respect to wildlife, for domestic livestock under rules and regulations promulgated by the Secretary of the Interior under the authority of the aforesaid act of June 28, 1934, as amended: *And provided further,* That land within the exterior limits of the area herein described, acquired and to be acquired by the United States for the use of the Department of Agriculture for

7509

conservation of migratory birds and other wildlife, shall be and remain under the exclusive administration of the Secretary of Agriculture and may be utilized for public grazing purposes only to such extent as may be determined by the said Secretary to be compatible with the utilization of said lands for the purposes for which they were acquired as aforesaid under regulations prescribed by him.

The reservation made by this order supersedes as to the above-described lands the temporary withdrawal for classification and other purposes made by Executive Order No. 6910 of November 26, 1934, as amended.

This preserve shall be known as the Fort Peck Game Range.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
Dec. 11, 1936.

[No. 7509]

[F. R. Doc. 3825—Filed, December 14, 1936; 2:30 p. m.]

[4310-84]

(M-30912; Public Land Order 56351)

MONTANA

Prior Amendment of Executive Order No. 7509; Prior Revocation of Public Land Order No. 5498; Change of Name to Charles M. Russell National Wildlife Refuge; Clarification of Administration and Management Under National Wildlife Refuge System Administration Act

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This public land order changes the name of the Charles M. Russell National Wildlife Range to the Charles M. Russell National Wildlife Refuge. Also, it affords notice of prior statutory action taken to revoke or revise public land orders or Executive orders, as necessary, to change the administration and management of the refuge area in accordance with Pub. L. 94-223.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority that is vested in the Secretary of the Interior by law, including the authority vested in him by section 204 of the Act of October 21, 1976 (Pub. L. 94-579, 90 Stat. 2751), and in accordance with the Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), it is ordered as follows:

1. The Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), provides that units of the National Wildlife Refuge System, including the Fort Peck Game Range, the name of which was changed to the Charles M. Russell National Wildlife Range by Public Land Order No. 2951 of February 25, 1963 (28 FR 1871), shall be administered by the Secretary of the Interior exclusively through the United States Fish and Wildlife Service. Accordingly, notice is hereby given that effective as of February 27, 1976 and by virtue of Pub. L. 94-223, supra:

(a) Public Land Order No. 5498 of April 25, 1975 (40 FR 18996), as amended by Public Land Order No. 5500 of May 23, 1975 (40 FR 23472), which provided for the transfer of all of the Secretary's delegable authority for the operation and administration

of Charles M. Russell National Wildlife Range, as described in the aforesaid orders, to the Bureau of Land Management, was revoked; and such authority was, and is now, vested solely in the United States Fish and Wildlife Service;

(b) The operation and administration of the Charles M. Russell National Wildlife Range, including grazing, was to be administered, and is now being administered, in accordance with the National Wildlife Refuge System Administration Act, as amended, except that those holding grazing privileges, validly issued by the Bureau of Land Management and in effect on February 27, 1976, are permitted to continue such privileges under terms and conditions imposed by the Taylor Grazing Act, and implementing regulations, until those privileges expire. The renewal or initiation of grazing privileges subsequent to February 27, 1976, is in accordance with the National Wildlife Refuge System Administration Act, as amended, and implementing regulations.

(c) Executive Order No. 7509 of December 11, 1936 (1 FR 2149), which established the Charles M. Russell National Wildlife Range as the Fort Peck Game Range, was modified to the extent necessary for it to conform to the provisions of (a) and (b), above.

2. The name of the Charles M. Russell National Wildlife Range, as so designated by Public Land Order No. 2951 of February 25, 1963 (28 FR 1871), is hereby changed to the Charles M. Russell National Wildlife Refuge.

3. This order does not affect or alter in any respect the Notice of Proposed Withdrawal, M-39021 of March 4, 1975, relating to the Charles M. Russell National Wildlife Range, as published at 40 FR 11365.

Dated: April 25, 1978.

GUY R. MARTIN,
Assistant Secretary
of the Interior.

[FR Doc. 78-12034 Filed 5-2-78; 8:45 am]

LAEO-Montana

Charles M. Russell
National Wildlife Refuge

Proposal

- Charles M. Russell National Wildlife Refuge
- Summary: The FWS proposes a federal reserved water right for the CMR of all water remaining in the streams that flow onto the Refuge as of the date of the Compact. All state designated water basins would then be closed to future appropriations, but statutory exemptions from such a closure – household groundwater and small stock ponds – would still be applicable. An outline of the water right is as follows:
- Quantification: The United States shall have the right to water from the following sources where they occur on the Refuge: (157 streams - see spreadsheet)
- Natural Flow: The United States has a reserved water right to the natural flow in all the drainages containing any portion of the Refuge for flow remaining after satisfaction of the following rights:
- (1) all rights recognized under state law with a priority date prior to the effective date of this Compact;
- (2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and
- (3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.
- Priority Date: The United States has a priority date of December 11, 1936. All springs currently reserved as Public Water Reserves will retain the date of the original withdrawal.
- Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.
- Points and means of diversion: Any point on the Refuge and by any means subject to the terms of this Compact, if necessary.
- Purposes: The United States right to water may be used for consumptive and non-consumptive use for beneficial purposes under federal law, including but not limited to stream flow and habitat maintenance.
- Basin Closure:
- The Department shall not process or grant an application for a permit to appropriate or to reserve water for consumptive use after the effective date of this Compact.

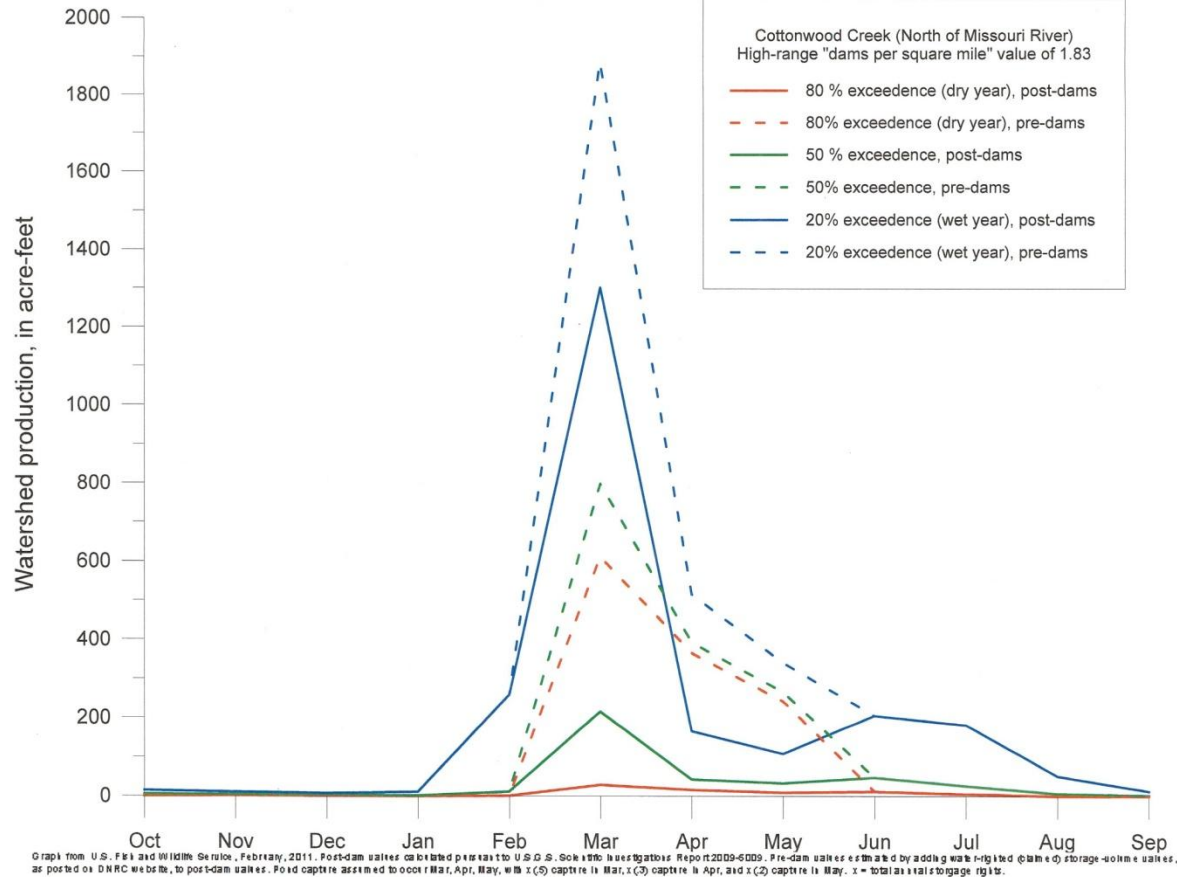
Hydrology

- USGS Study - SIR 2009-5009
- Analyzed data to estimate long-term streamflow characteristics
- Analyzed use of Regional Adjustment Relationship for estimating characteristics at short-term gaging stations (USFWS paid USGS to monitor several stations for 5 years)
- Developed regression equations to estimate streamflow characteristics at ungaged sites

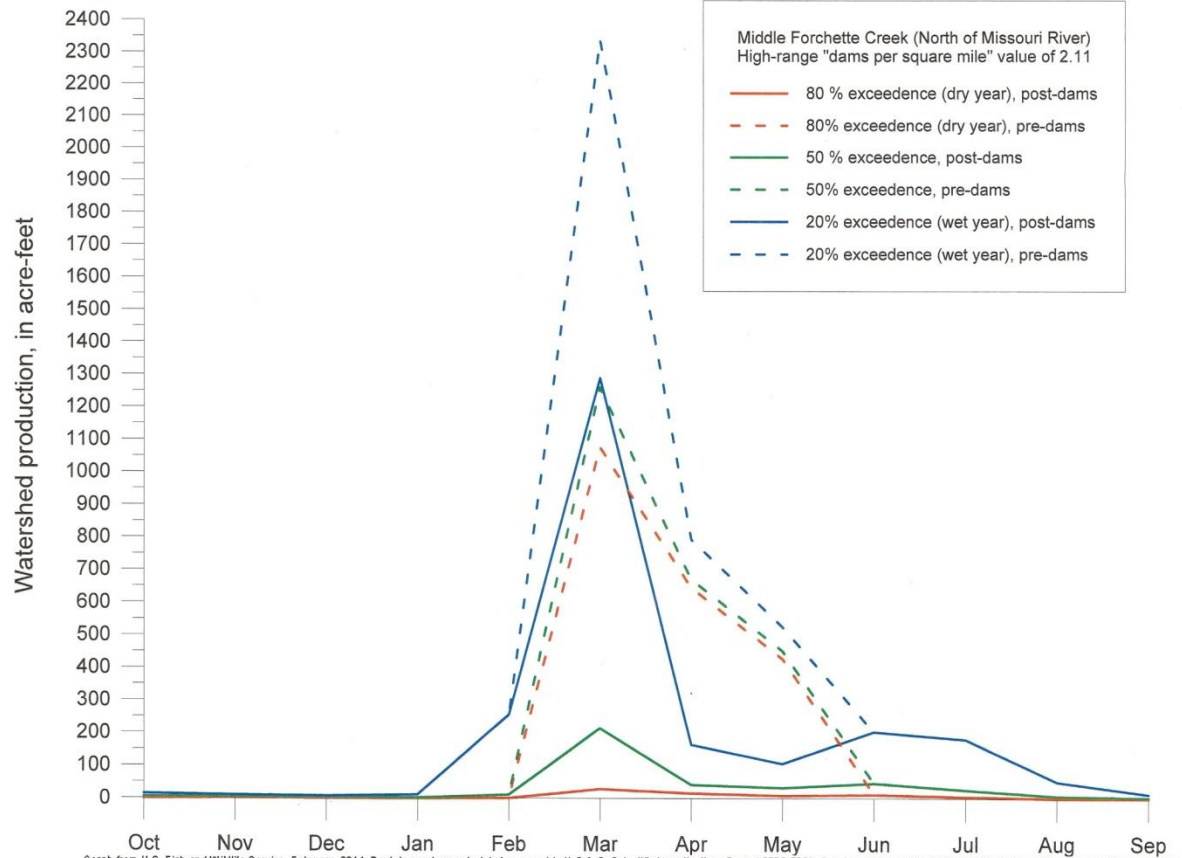
Hydrographs for Several Watersheds

- Used USGS generated equations
- Had to make assumptions about precipitation distribution
- Calculated Q20, Q50 and Q80
- There are currently 4,320 reservoirs located within the basins identified for closure
- Reservoir density is 0.73 reservoirs per square mile

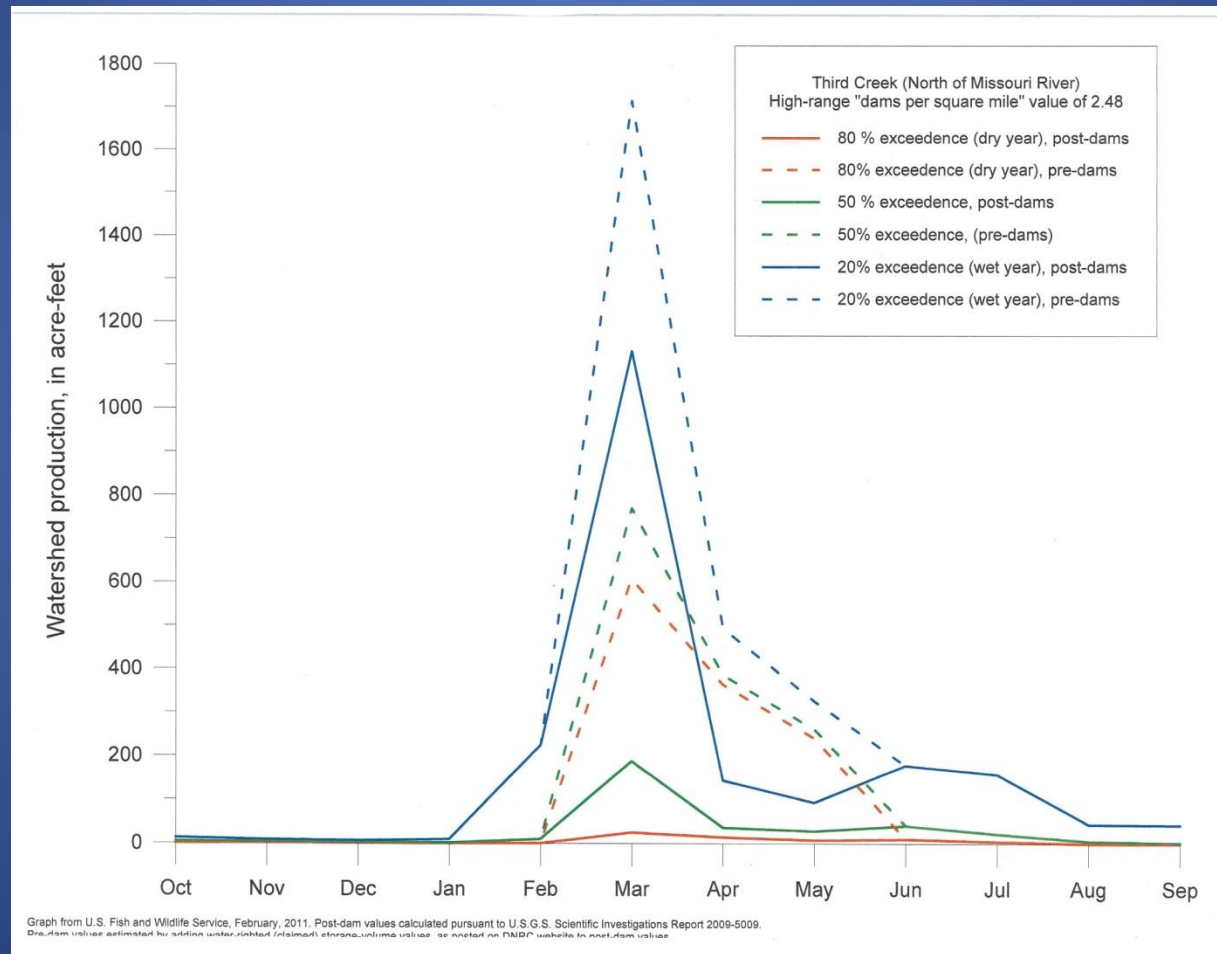
Cottonwood Creek



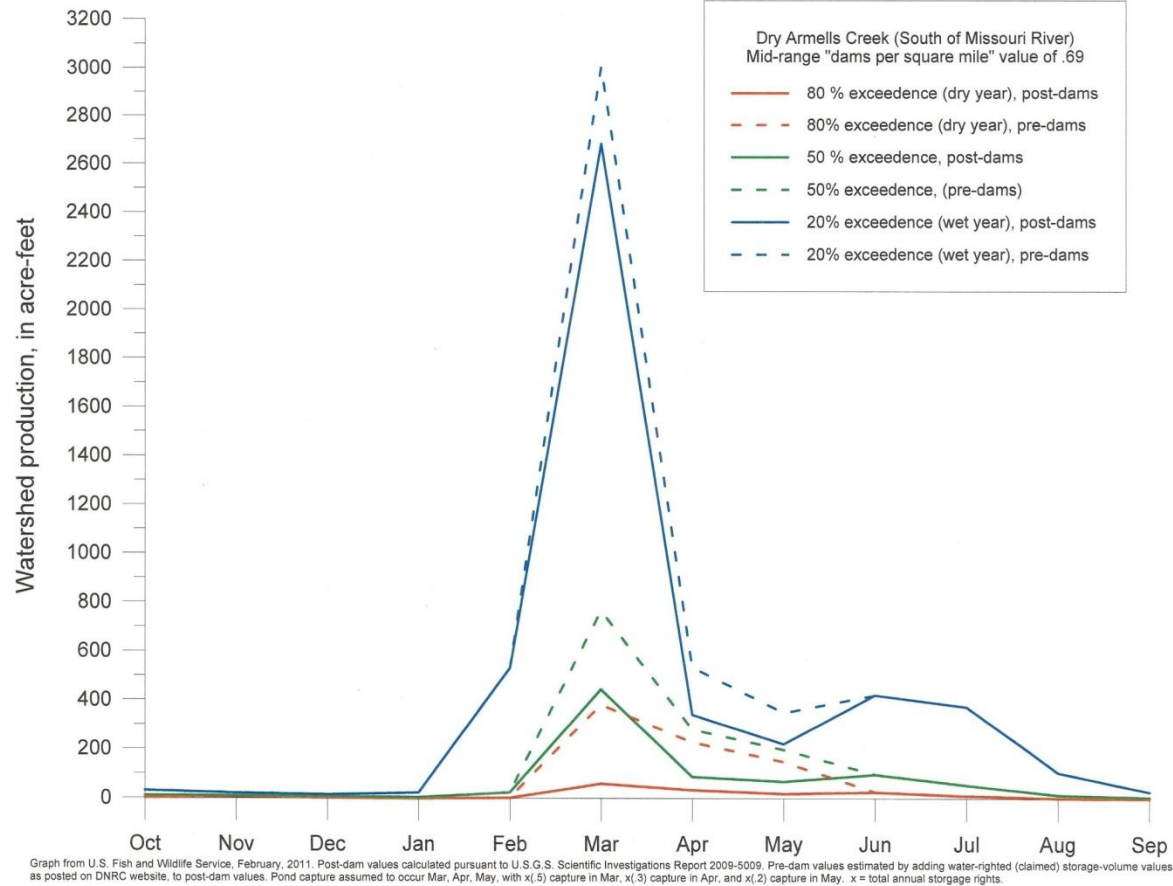
Middle Forchette Creek



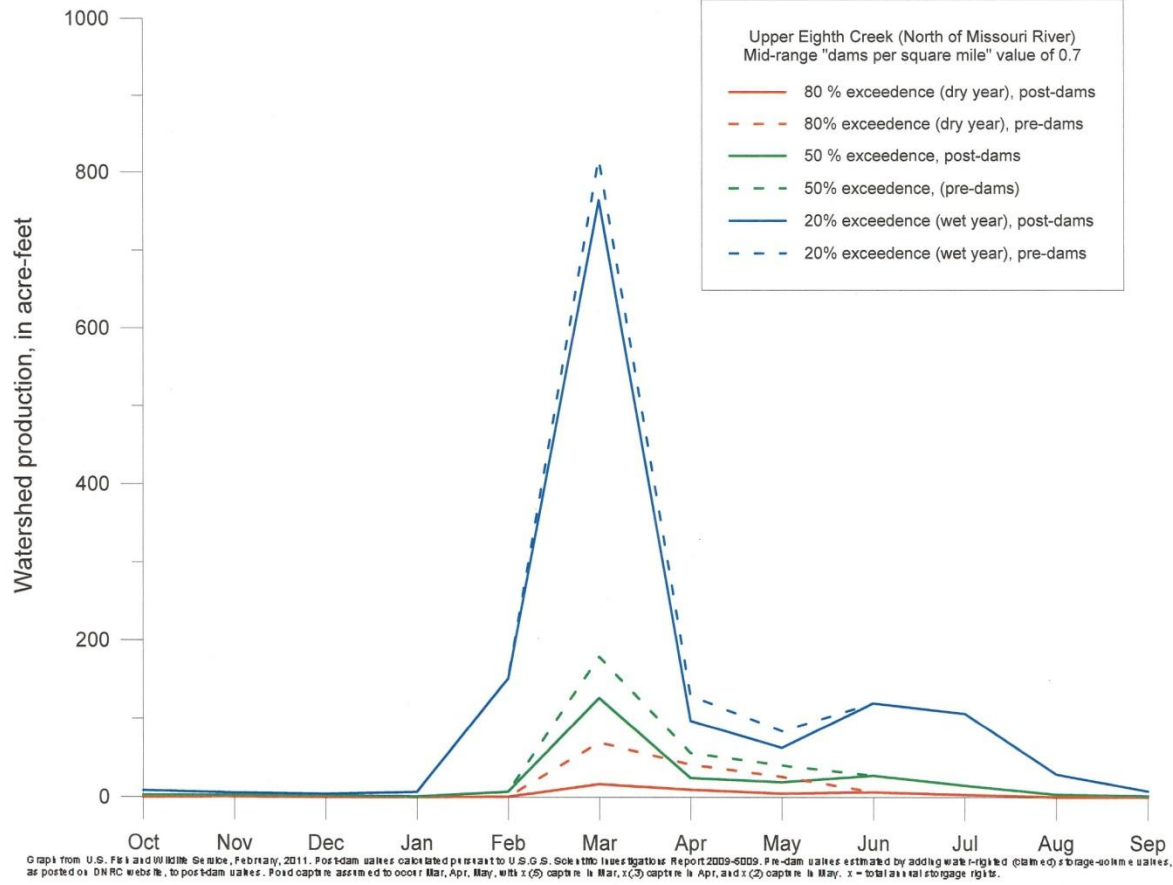
Third Creek



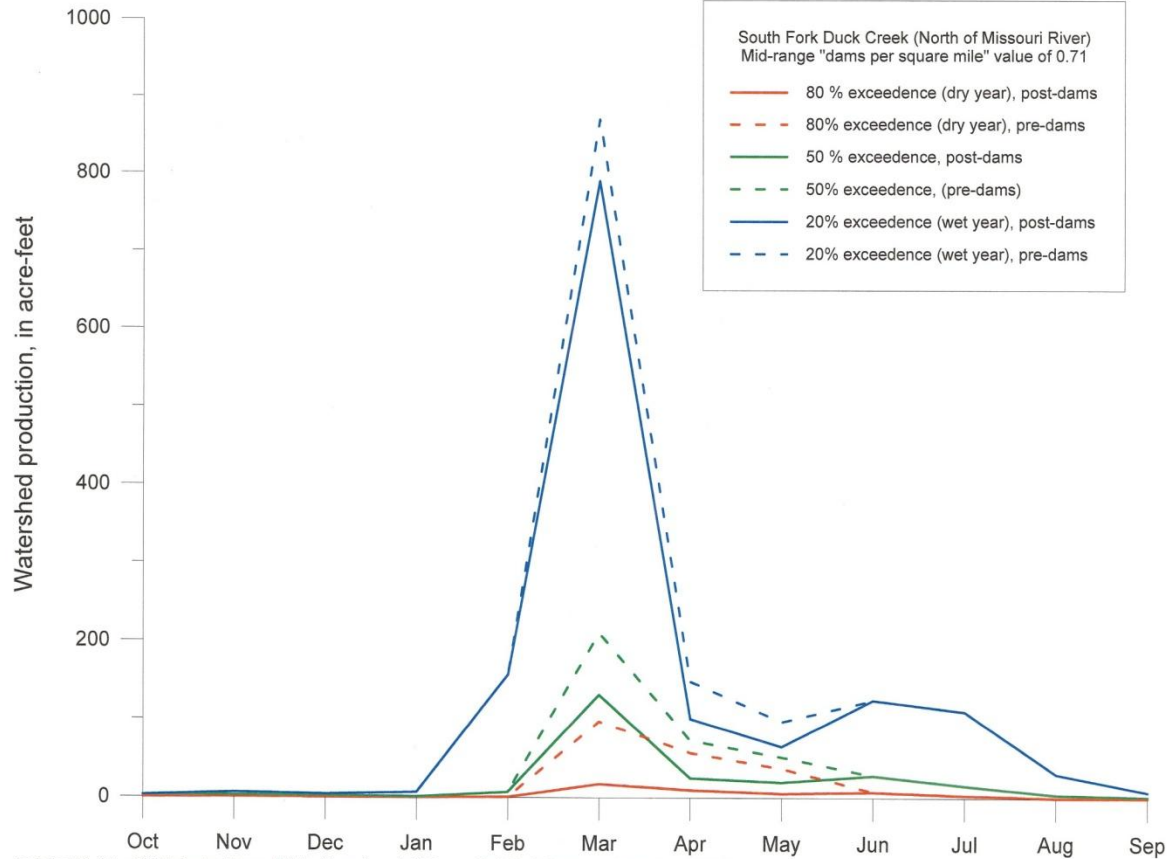
Dry Armells Creek



Upper Eighth Creek

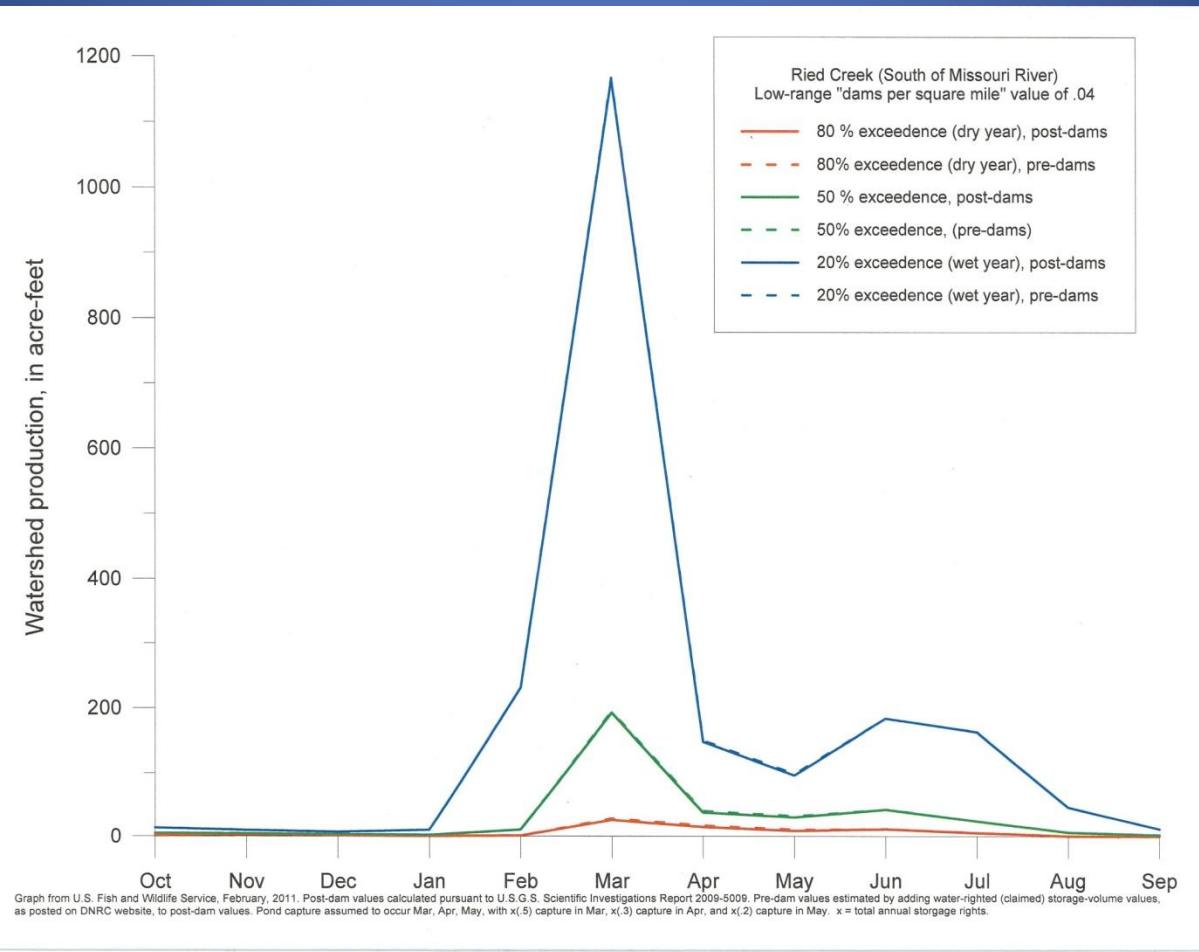


South Fork Duck Creek



Graph from U.S. Fish and Wildlife Service, February, 2011. Post-dam values calculated pursuant to U.S.G.S. Scientific Investigations Report 2000-5000. Pre-dam values estimated by adding water-righted (claimed) storage-volume values, as posted on DNR website, to post-dam values. Pond capture assumed to occur Mar, Apr, May, with $\times(6)$ capture in Mar, $\times(3)$ capture in Apr, and $\times(2)$ capture in May. \times = total annual storage right.

Reid Creek





MOU with BLM

- Agreement between agencies
- BLM subject to same standard basin closure with exceptions to be spelled out in MOU
- In process – will release to public once it is finalized